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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following parties request to cancel indicated registration.

Petitioner Information

Name	Corporacion Habanos, S.A.		
Entity	Corporation	Citizenship	Cuba
Address	Avenida 3ra #2006 e/20 y 22 Miramar Havana, CUBA		

Name	Empresa Cubana del Tabaco, dba Cubatabaco		
Entity	Corporation	Citizenship	Cuba
Address	O'Reilly No. 104 Havana, CUBA		

Attorney information	David B. Goldstein Rabinowitz, Boudin, Standard, Krinsky & Lieberman, P.C. 45 Broadway, Suite 1700 New York, NY 10006-3791 UNITED STATES dgoldstein@rbskl.com Phone:212-254-1111		
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Registrations Subject to Cancellation

Registration No	2202978	Registration date	11/10/1998
Registrant	ALEX GOLDMAN P.O. Box 6030 House of Oxford Distributors Somerset, NJ 08875 UNITED STATES		

Goods/Services Subject to Cancellation

Class 034. First Use: 1994/08/01 First Use In Commerce: 1994/08/01 All goods and services in the class are cancelled, namely: CIGARS PRODUCED FROM CUBAN SEED TOBACCO
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Grounds for Cancellation

Deceptiveness	Trademark Act section 2(a)		
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)		
Abandonment	Trademark Act section 14		
Registration No	3056917	Registration date	02/07/2006
Registrant	Goldman, Alex 11-22 Welling Court Astoria, NY 11102 UNITED STATES		

Goods/Services Subject to Cancellation

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All goods and services in the class are cancelled, namely: CIGARS PRODUCED FROM CUBAN SEED TOBACCO

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Abandonment	Trademark Act section 14		
The mark is deceptively misdescriptive	Trademark Act section 2(e)(1)		
The mark is primarily geographically deceptively misdescriptive	Trademark Act section 2(e)(3)		
Other	Articles 23-28 of the General Inter-American Convention for Trade Mark and Commercial Protection, 46 Stat. 2907		
Registration No	3064827	Registration date	03/07/2006
Registrant	Goldman, Alex 11-22 Welling Court Astoria, NY 11102 UNITED STATES		

Goods/Services Subject to Cancellation

Class 034. First Use: 1994/08/01 First Use In Commerce: 1994/08/01
All goods and services in the class are cancelled, namely: Cigars produced from Cuban seed tobacco and made in the Cuban style of hand rolling

Grounds for Cancellation

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<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
The mark is deceptively misdescriptive	Trademark Act section 2(e)(1)
The mark is primarily geographically deceptively misdescriptive	Trademark Act section 2(e)(3)
Other	Articles 23-28 of the General Inter-American Convention for Trade Mark and Commercial Protection, 46 Stat. 2907

Attachments	Petition.cancel.Habana Gold.pdf (17 pages)(67655 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/David B. Goldstein/
Name	David B. Goldstein
Date	02/04/2011

3. Upon information and belief, Registrant Alex Goldman (“Registrant”) is an individual residing in New York and is a United States citizen.,

4. Petitioner Habanos, S.A. currently owns, among others, the federal registration of the mark, HABANOS UNICOS DESDE 1492, U.S. Reg. No. 2,177,837, applied for on August 16, 1996, in the United States for cigars and related products in International Class 34. Habanos, S.A. uses this mark, translated as "unique Havana cigars since 1492," throughout the world exclusively for cigars that are of 100% Cuban origin.

5. The mark HABANOS UNICOS DESDE 1492 appears regularly in advertisements for Habanos, S.A.'s 100% Cuban origin cigars in international and United States publications. This mark is used in such advertisements both in Spanish and in English translation as “Habanos Unique since 1492” and “Havanas Unique since 1492.”

6. Petitioner Habanos, S.A. is engaged, *inter alia*, in the trade, marketing, and advertising of Cuban cigars throughout the world, including in Cuba, and the export of Cuban cigars throughout the world (with the exception of the United States due to the United States trade embargo). Habanos, S.A. emphasizes that its cigars are made in Cuba from 100% Cuban-grown tobacco in its promotion, marketing and advertising, including in advertisements in the United States.

7. Petitioner Cubatabaco currently owns, among others, the federal registrations in the United States of the mark LA CASA DEL HABANO, U.S. Reg. No. 1,970,911, applied for on September 22, 1994, translated as "the house of the Cuban cigar," for cigars and related products in International Class 34, and for LA CASA DEL HABANO, U.S. Registration No. 2,212,119, applied for on August 16, 1996, as a service mark in International Class 35 for “retail store services featuring tobacco and smokers’ accessories” and in International Class 42 for

“social club services, bar services, and restaurant services.”

8. Petitioner Cubatabaco’s LA CASA DEL HABANO Marks regularly appear in advertisements in the United States in connection with cigars that are of 100% Cuban origin.

9. Petitioner Cubatabaco currently owns the application in the USPTO for the certification mark HABANOS, Application Serial No. 77157193, in IC A for “cigars,” filed April 16, 2007. The mark certifies “that the cigars have their geographical origin in Cuba and are made from Cuban grown tobacco, ‘Cuba’ meaning the entire national territory of the Republic of Cuba.”

10. “HABANA,” the Spanish word for HAVANA, is the appellation of origin (also known as a denomination or indication of geographical origin) for Cuban-origin tobacco and tobacco products registered by Petitioner Cubatabaco in 1967 in accordance with the 1958 Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, as revised and amended.

11. The term “HABANOS” is the appellation of origin for cigars originating in the entire national territory of the Republic of Cuba, and was registered by Petitioner Cubatabaco in 1967 pursuant to the Lisbon Agreement. Under Petitioner Cubatabaco’s authority, Petitioner Habanos, S.A. uses the “Habanos” geographical denomination of origin on all packages of its 100% Cuban origin cigars.

12. On September 26, 2008, the Board, in a precedential decision, refused registration of the mark HAVANA CLUB for “cigars made from Cuban seed tobacco,” on the ground that the mark was primarily geographically deceptively misdescriptive” under section 2(e)(3) of the Lanham Act. *Corporacion Habanos, S.A. v. Anncas, Inc.*, 88 U.S.P.Q.2d 1785 (TTAB 2008). That decision became final and non-appealable on November 26, 2008.

THE APPLICATION PROCEEDINGS

13. On December 5, 1997, Registrant's predecessor, Gold Leaf Tobacco Corp., filed an application, Serial No. 75401081, in the USPTO under Section 1(a) of the Lanham Act, 15 U.S.C. § 1051(a), to register the mark HABANA GOLD in International Class 34 for "cigars, produced from tobacco grown from Cuban tobacco seeds."

14. On May 19, 1998, the Examiner issued an amendment to the identification of goods to "cigars produced from Cuban seed tobacco," with a disclaimer of "Habana." The Examiner did not request, and the application did not include, a translation of "Habana."

15. The mark was published for opposition on August 8, 1998, and registered on November 10, 1998, as Registration No. 2,202,978.

16. On or about August 24, 2004, an assignment from Gold Leaf Tobacco Corp. to Mark Goldman of the entire interest in Registration No. 2,202,978 was recorded at the USPTO. On or about September 27, 2004, an assignment from Mark Goldman to Alex Goldman of "an undivided part of Assignors [*sic*] interest" in that registration was recorded at the USPTO.

17. On November 1, 2004, Registrant filed a Combined Section 8 & 15 Declaration for Registration No. 2,202,978, declaring: "that the mark shown therein has been in continuous use in commerce for five consecutive years from the date of registration to the present, on or in connection with the 'cigars' identified in the registration; that such mark is in use in commerce on or in connection with the 'cigars' identified in the registration, as evidenced by the attached specimen showing the mark as currently used." The Combined Section 8 & 15 filing also requested: "Please delete 'produced from Cuban seed tobacco' from the identification of goods." The PTO apparently did not address this request at that time.

18. Upon information and belief, the above-referenced declaration that the HABANA

GOLD mark “has been in continuous use in commerce for five consecutive years from the date of registration to the present, on or in connection with the ‘cigars’ identified in the registration” was false, and known by Registrant to be false when made.

19. Upon information and belief, Gold Leaf Tobacco Corp. ceased using the HABANA GOLD mark in commerce for several years prior to the 2004 assignments, with intent not to resume use of the mark, and abandoned the mark during that period of non-use.

20. On November 7, 2008, Registrant filed a Combined Section 8 & 9 Declaration, in which Registrant again proposed to delete “produced from Cuban seed tobacco” from the identified goods.

21. On February 24, 2009, the PTO requested clarification of the proposed change to the goods. On March 27, 2009, Registrant responded by stating: “The Section 8 affidavit submitted for the above referenced registration inadvertently deleted ‘produced from Cuban seed tobacco’ from the identification of goods,” and stated that the goods should continue to be identified as “cigars produced from Cuban seed tobacco.”

22. On September 1, 2004, Registrant applied to register HABANA GOLD and HABANA GOLD & Design, Serial Nos. 76609734, 76609744, respectively, for “cigars.”

23. On March 30, the Examiner issued an Office Action to Serial No. 76609744, refusing registration, and stating:

Registration is refused because the proposed mark consists of or comprises geographically deceptive and primarily geographically deceptively misdescriptive matter in relation to the identified goods. 15 U.S.C. §§1052(a) and (e)(3)... The primary significance of the term “Habana” is geographic. The goods do not originate in this geographic location. The public is likely to believe that applicant’s goods come from this place because Havana, Cuba, is a location where cigars are produced. Furthermore, this belief would materially influence consumers to purchase the goods because Havana, Cuba, is renown for the production of cigars. (Citations omitted).

24. The Examining Attorney also stated: “Normally, if an applicant who seeks to register a mark containing the geographical name of a location in Cuba describes its goods as ‘cigars made from Cuban seed tobacco’, the refusal to register the mark would be withdrawn.” The Examiner noted, however, that such an amendment would result in refusal of the application as duplicative of Registration No. 2,202,978.

25. Although Registrant had attempted to delete “produced from Cuban seed tobacco” from its identification of goods for Registration No. 2,202,978 several months earlier, Registrant then amended the goods from “cigars” to “cigars produced from Cuban seed tobacco and made in the Cuban style of hand rolling.” Registrant also disclaimed “Habana,” but did not provide a translation, and none was requested.

26. On April 13, 2005, a different Examiner refused registration of Serial No. 76609734 under sections 2(a), (e)(3) of the Act, using the identical language quoted in para. 23, *supra*. The Examiner also stated: “if the applicant amends its identification to ‘cigars produced from Cuban seed tobacco,’ the applicant will then be required to disclaim HABANA on the grounds that the term is descriptive with regard to a characteristic of the goods.” The Examiner also required a translation of “Habana,” as “Havana.”

27. In Response, Registrant amended the goods to “cigars produced from Cuban seed tobacco,” translated “Habana” as “Havana,” and disclaimed “Habana.”

28. When Registrant amended the goods for both of his 2004 applications, Registrant did not provide any information to the PTO supporting or explaining the amendment of the goods to “cigars produced from Cuban seed tobacco,” or otherwise take issue with the Examiners’ findings that the marks were unregistrable under sections 2(a) or 2(e)(3) for “cigars.”

29. Upon information and belief, although Registrant was aware that the Examiners

were confused and mistaken in believing that “cigars produced from Cuban seed tobacco” had their geographic origin in Cuba or Havana, Cuba, and although Registrant had several months prior, attempted to delete “produced from Cuban seed tobacco” from Registration No. 2,202,978, Registrant amended the identification of goods from “cigars” to “cigars produced with Cuban seed tobacco” for the specific purpose of overcoming the Examiners’ initial refusals to register the marks, and to avoid having registration refused pursuant to sections 2(a) and 2(e)(3). When Registrant so amended his goods, Registrant knew that “Cuban seed tobacco” has no relevant connection or association with Cuba, or Havana, Cuba, and that Registrant’s HABANA GOLD cigars do not come from, or originate in, Havana, Cuba, or have the characteristic of being Cuban origin cigars.

30. Following the above described amendments, Serial Nos. 76609734 and 76609744 matured into registrations on February 7, 2006 and March 7, 2006, respectively.

31. Registrant’s HABANA GOLD marks are, *inter alia*, geographically deceptive and primarily geographically deceptively misdescriptive, deceptive and deceptively misdescriptive of the identified goods, Registrant abandoned Registration No. 2,202,978, and Registrant obtained the HABANA GOLD registrations through fraud on the USPTO.

THE MEANING OF "HABANA"

32. “Habana” is Spanish for “Havana,” the largest city and the capital of Cuba.

33. The word "Habana" primarily refers to Habana (Havana), Cuba.

34. The primary significance of the HABANA GOLD marks is a generally known geographic location – Havana, Cuba.

35. The addition of the common word “gold” does not alter the marks’ primary geographic significance.

36. In addition to denoting the city of Havana, Cuba, “Havana” (the English translation of “Habana”) is used, recognized, and understood throughout the world, including in the United States, by both cigar consumers and within the cigar industry, to denote Havana’s most famous export – cigars that are of 100% Cuban origin, made exclusively from tobacco grown in Cuba and manufactured in Cuba, primarily in or near Havana, Cuba.

37. The Spanish word “Habano” (and its plural, “Habanos”) is recognized among cigar consumers and in the cigar industry throughout the world, including in the United States, to denote cigars that are of 100% Cuban origin.

38. Numerous English language dictionaries and encyclopedias, including those published in the United States, define the word "Havana" to mean a cigar made in Cuba from Cuban tobacco, in addition to denoting the largest and capital city of Cuba.

39. Spanish language dictionaries define "Habano" as relating to, or from, “La Habana,” Cuba), or by extension the island of Cuba, or as a cigar made in Cuba from Cuban tobacco.

40. The leading English-language cigar books, including in book titles, consumer guides, and cigar magazines sold in the United States, and news and feature stories appearing in general circulation magazines, newspapers, and other publications directed to the general public in the U.S use the terms “Habano(s)” and “Havana(s)” to denote a 100% Cuban-origin cigar.

41. For decades before Registrant’s applications, or the claimed first use date of August 1, 1994, the term “Havana” has been used to mean a 100% Cuban-origin cigar.

42. United States and international publications directed to the cigar-consuming public and to the trade, including the United States cigar-consuming public and trade, refer to "Havanas" or "Habanos," that is, 100% Cuban-origin cigars, as a different type of cigar from

those cigars that are not from Cuba.

43. Cuba is internationally recognized, including in the United States, as the most renowned country in the world for the production and manufacture of cigars, including cigars of the highest quality, and Havana/ is internationally recognized, including in the U.S., as the city and province most renowned for the manufacture and export of the highest quality cigars.

44. No other country is as renowned as Cuba for cigars, and no geographic location is as renowned for cigars as Havana, Cuba.

45. Cuban-origin cigars are desired by cigar smokers throughout the world, including in the United States, because of their Cuban origin.

46. Consumers in the United States and elsewhere in the world associate cigars with Cuba and particularly with Havana, Cuba. This association is one of the strongest goods/place associations of any consumer product with a particular geographic region in the world.

47. Registrant's marks denote, are, and will be understood by United States consumers as denoting, that cigars bearing those marks are produced or originate in Cuba.

48. Registrant's cigars do not come from, or otherwise originate in, Havana, Cuba or elsewhere in Cuba, and are not "Havanas," that is, cigars from Cuba.

49. Registrant, a United States citizen, has no lawful means of obtaining or selling Cuban-origin cigars. Without limitation, the United States' Cuban Assets Control Regulations, including specifically 31 C.F.R. § 515.201, 515.204, prohibit any such activity.

50. The cigar-consuming public is likely to believe that the place identified by Registrant's marks – Havana, Cuba – describes Registrant's goods, and their geographic origin, when the goods in fact do not come from Havana or Cuba.

51. Consumers' mistaken belief that Registrant's cigars come from Havana or Cuba

would be a material factor in the purchasing decision of a substantial proportion of relevant consumers.

52. By use of the word “Habana,” Registrant’s marks misdescribe a quality, characteristic, or feature of the goods, *i.e.*, Cuban cigars, because the goods are not cigars from Cuba, and do not have the quality or characteristics of cigars from Cuba.

53. By use of the word “Habana,” cigar consumers in the United States are likely to believe this misrepresentation of the goods.

**REGISTRANT’S MEANINGLESS CLAIM THAT HIS GOODS ARE
“PRODUCED FROM CUBAN SEED TOBACCO”**

54. Upon information and belief, Registrant represented to the USPTO that his cigars are “produced from Cuban seed tobacco” solely to avoid having the USPTO refuse registration on the ground that the use of “Habana” is geographically deceptive and deceptively misdescriptive, as determined by the Examiners, although Registrant in fact knew that the goods do not come from Havana or Cuba, do not have their origin in Cuba, and have no connection or association with Havana or Cuba, with Cuban cigars or tobacco, or with Petitioners.

55. When used in the United States to refer to tobacco grown outside of Cuba, “Cuban seed tobacco” is merely a name given to a type of tobacco that is grown outside of Cuba from seeds that do not themselves come from Cuba, but are claimed, without any means of verification, to be distant descendants of seeds of tobacco plants grown in Cuba many generations ago.

56. Upon information and belief, the type of non-Cuban tobacco that Registrant refers to as “Cuban seed tobacco” either: 1) is a very distant descendant from plants or seeds that were taken from Cuba decades ago; *or* 2) is not even a distant descendant from seeds or plants that were taken from Cuba decades ago, but is merely a type of tobacco, grown outside of Cuba, and

generically referred to as “Cuban seed tobacco”; *or* 3) is not even the type of tobacco generically referred to as “Cuban seed,” but Registrant may have made such misrepresentation to the USPTO solely to obtain registration of its marks through such misrepresentation.

57. It is not possible to verify whether Registrant’s cigars are made from tobacco grown from seeds that are descendants of tobacco seeds that came from Cuba.

58. Cigars allegedly made from tobacco grown from seeds that are descendants of seeds that came from Cuba are different from cigars made from Cuban-origin tobacco in terms of quality, characteristics, taste and aroma.

59. The change in identification of the goods from “cigars” to “cigars produced from Cuban seed tobacco” does not, and cannot, change the primarily geographically deceptively misdescriptive, deceptive, and deceptively misdescriptive nature of Registrant’s marks.

60. The change in identification of the goods from “cigars” to “cigars ... made in the Cuban style of hand rolling” (which change was made to avoid refusal on grounds of duplicativeness with Registration No. 2,202,978) does not, and cannot, change the primarily geographically deceptively misdescriptive, deceptive, and deceptively misdescriptive nature of Registrant’s marks.

61. The use of the terms “Cuban seed tobacco” or “made in the Cuban style of hand rolling” cannot overcome the above statutory bars to registration of the HABANA GOLD marks.

62. Upon information and belief, the USPTO would not have registered the marks had it known that neither “Cuban seed tobacco,” nor the seeds generating the plants that yield the tobacco, come from Havana, Cuba, or anywhere else in Cuba; and that “Cuban seed tobacco” does not have any connection or association with Cuba, Havana, or Cuban-origin cigars, other than the unverifiable possibility of a distant genetic descent.

INJURY TO PETITIONERS

63. Petitioners believe that they will be and have been damaged by the registrations of Registrant's HABANA GOLD marks upon the Principal Register, including by Registrant's use of said marks on cigars of non-Cuban origin, which will damage and have damaged the reputation that Havana cigars, that is, genuine Cuban-origin cigars, have in the United States. Such registrations and use also will deceive and have deceived consumers into believing that Cuban cigars, or cigars made from Cuban tobacco, are presently available for purchase in the United States.

64. Petitioners' success in marketing 100% Cuban-origin cigars to U.S. consumers as soon as U.S. law permits, including through use of the registered marks HABANOS UNICOS DESDE 1492 & DESIGN and LA CASA DEL HABANO; the applied-for certification mark HABANOS; and "Habana" as a geographic indication, will be and has been damaged and diminished by the registrations of Registrant's marks that include the term "Habana," which deceptively suggest that Registrant's cigars are of Cuban origin.

65. Petitioners' current ability to use the above-identified registered trademarks and "Habanos" as a geographic indication and certification mark in advertisements currently placed in the United States in connection with 100% Cuban-origin cigars will be and has been damaged by the registrations of Registrant's HABANA GOLD marks.

66. Petitioner Cubatabaco believes that it will be and has been damaged by the registrations of Registrant's HABANA GOLD marks because those registrations may interfere with Petitioner Cubatabaco's efforts to register its certification mark HABANOS, which is pending before the USPTO.

FIRST GROUND FOR CANCELLATION

67. Petitioners repeat and reallege each and every allegation set forth in paragraphs 1 through 66 of this Petition to Cancel as if fully set forth herein.

68. The HABANA GOLD marks, as used on or in connection with Registrant's identified goods, are deceptive and primarily geographically deceptively misdescriptive within the meaning of Sections 2(a) and 2(e)(3) of the Lanham Act, 15 U.S.C. § 1052(a), (e)(3), for lack of the requisite nexus with Havana, Cuba or Cuba, and, therefore, the registrations of the marks should be cancelled.

SECOND GROUND FOR CANCELLATION

69. Petitioners repeat and reallege each and every allegation set forth in paragraphs 1 through 66 of this Petition to Cancel as if fully set forth herein.

70. Registrant's HABANA GOLD marks, as used on or in connection with Registrant's identified goods, are deceptive and deceptively misdescriptive within the meaning of Sections 2(a) and 2(e)(1) of the Lanham Act, 15 U.S.C. § 1052(a), (e)(1), and, therefore, the registrations of the marks should be cancelled.

THIRD GROUND FOR CANCELLATION

71. Petitioners repeat and reallege each and every allegation set forth in paragraphs 1 through 66 of this Petition to Cancel as if fully set forth herein.

72. "Habana" is an indication of geographical origin or source within the meaning of Articles 23-28 of the General Inter-American Convention for Trade Mark and Commercial Protection, 46 Stat. 2907 ("IAC"), to which both Cuba and the United States are parties, and which treaty is in force between the United States and Cuba.

73. "Habana" does not correspond to the place in which Registrant's identified goods are, will be, or lawfully could be, fabricated, manufactured, produced or harvested.

74. "Habana" has not through constant, general and reputable use in commerce come

to form the name or designation itself of Registrant's identified goods.

75. To the consuming public, the quality and reputation of cigars depend on the place of production or origin.

76. Articles 23-28 of the IAC prohibit Registrant's use and registration in the United States of the term "Habana" in connection with non-Cuban origin cigars.

77. Under the aforesaid provisions of the IAC and also pursuant to Section 44(b), (h) of the Lanham Act, 15 U.S.C. § 1126(b), (h), the registrations of the marks should be cancelled.

FOURTH GROUND FOR CANCELLATION

78. Petitioners repeat and reallege each and every allegation set forth in paragraphs 1 through 66 of this Petition to Cancel as if fully set forth herein.

79. Upon information and belief, Registrant's predecessor, Gold Leaf Tobacco Corp., ceased use in commerce of the HABANA GOLD mark for more than three (3) years, with intent not to resume use of the mark, and abandoned said mark prior to purporting to assign the mark, including Registration No. 2,202,978, to Registrant's predecessor, Mark Goldman.

80. Because, upon information and belief, the HABANA GOLD mark was abandoned prior to the purported assignments of Registration No. 2,202,978, to Mark Goldman, and from Mark Goldman to Registrant, the assignments are void.

81. Because, upon information and belief, Registrant's predecessor abandoned Registration No. 2,202,978, prior to purporting to assign the mark, Registration No. 2,202,978 should be cancelled.

FIFTH GROUND FOR CANCELLATION

82. Petitioners repeat and reallege each and every allegation set forth in paragraphs 1 through 66 of this Petition to Cancel as if fully set forth herein.

83. Registrant (including Registrant's predecessor) made material misrepresentations of fact and material omissions of fact when he identified the goods as "produced from Cuban seed tobacco," without informing the PTO that such identification of the goods does not mean that the original source of the cigars is Havana, Cuba, or that the cigars or tobacco come from Havana or Cuba, and without informing the USPTO that the "Cuban seed tobacco" claim is itself unverifiable.

84. When Registrant made these material misrepresentations and omissions, he knew that the cigars did not come from Cuba, or have their origin in Cuba, or have the characteristics of genuine Cuban-origin cigars.

85. When Registrant made these material misrepresentations and omissions, he was aware that the USPTO Examiners mistakenly believed that cigars "produced from Cuban seed tobacco" had their origins in Cuba or had the characteristics of genuine Cuban-origin cigars.

86. These material misrepresentations and omissions were made with the specific intent and purpose of having the USPTO rely on them in order to obtain registration of the marks, which Registrant knew would otherwise be refused on the ground that the marks are geographically deceptive and deceptively misdescriptive.

87. Upon information and belief, but for Registrant's aforesaid material misrepresentations and omissions, the USPTO would have refused registration of the marks.

88. Registrant made a knowing, material and false statement of fact when he declared in the Combined Section 8 & 15 Declaration for Registration No. 2,202,978 that the HABANA GOLD mark "has been in continuous use in commerce for five consecutive years from the date of registration to the present, on or in connection with the 'cigars' identified in the registration."

89. Because of Registrant's aforesaid material misrepresentations and omissions to

the PTO, the registrations of the marks should be cancelled.

WHEREFORE, Petitioners pray that Registration Nos. 2,202,978; 3,056,917; 3,064,827 for HABANA GOLD be cancelled pursuant to 15 U.S.C. § 1064, and that this Petition be granted in favor of the Petitioners.

Dated: February 4, 2011

Respectfully submitted,

By: /David B. Goldstein/
DAVID B. GOLDSTEIN
RABINOWITZ, BOUDIN, STANDARD,
KRINSKY & LIEBERMAN, P.C.
45 Broadway – Suite 1700
New York, New York 10006-3791
212-254-1111
dgoldstein@rbskl.com
*Attorneys for Petitioners Corporacion Habanos,
S.A. and Empresa Cubana del Tabaco*

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that this Petition to Cancel Registration Nos. 2,202,978; 3,056,917; 3,064,827 for HABANA GOLD is being filed electronically today, February 4, 2011, on the Electronic System for Trademark Trials and Appeals for the United States Patent Office.

/David B. Goldstein/
David B. Goldstein

CERTIFICATE OF SERVICE

The undersigned certifies that true and correct copies of the foregoing Petition to Cancel Registration Nos. 2,202,978; 3,056,917; 3,064,827 for HABANA GOLD were served on Registrant by mailing, postage prepaid, said copies on February 4, 2011 via U.S. Certified Mail to the Registrant’s addresses of record and to the attorney and correspondent listed for said Registrations on the USPTO’s TARR database:

Alex Goldman
P.O. Box 6030
House of Oxford Distributors
Somerset, NJ 08875
(for Registration No. 2,202,978)

Alex Goldman
11-22 Welling Court
Astoria, NY 11102
(for Registration Nos. 3,056,917; 3,064,827)

Robert C. Faber
Ostrolenk Faber Gerb & Soffen LLP
1180 Avenue of the Americas
7th Floor
New York, NY 10036-8403

/David B. Goldstein/
David B. Goldstein